

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAMELA NAGY,

Plaintiff,

v.

Case No. 06-13881
Honorable Patrick J. Duggan

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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OPINION AND ORDER

This matter is before the court on a Report and Recommendation (“R&R”) issued by Magistrate Judge Virginia M. Morgan on February 22, 2007, in response to Plaintiff’s apparent failure to effectuate service on Defendant. In her R&R, Magistrate Judge Morgan recommends dismissal of Plaintiff’s complaint because it appeared from the court’s docket that counsel for Plaintiff had failed to serve the complaint upon Defendant, more than 120 days had elapsed since the filing of the complaint, and the summons had expired. Alternatively, if Plaintiff’s counsel did serve Defendant but only failed to file proof of service and if counsel filed such proof of service on or before February 28, 2007, Magistrate Judge Morgan recommends the imposition of a \$150.00 sanction upon Plaintiff. At the conclusion of the R&R, Magistrate Judge Morgan advises the parties that they may object to and seek review of the R&R within ten days of service upon them. Plaintiff filed objections to the R&R on February 28, 2007.

In her objections, Plaintiff indicates that she initially did not attempt to serve Defendant because she received a letter from the court's Deputy Clerk, dated September 7, 2006, in which the Deputy Clerk advises Plaintiff that the U.S. Marshal will serve Defendant with the summons and complaint. Plaintiff has attached a copy of the letter she received from the Deputy Clerk to her objections, which in fact states that Plaintiff's application to proceed without prepayment of fees was granted and that the judge assigned to her case ordered the clerk's office "to arrange for service of the summonses [sic] and complaint by the U.S. Marshal." In her objections, Plaintiff further informs the court that, upon receiving the R&R, she served Defendant. In fact, Plaintiff filed a Return of Service Form on February 28, 2007, indicating that she served Defendant via certified mail, return receipt requested, on February 20, 2007.

Based on the information contained in Plaintiff's objections and the fact that the court, not Plaintiff, is to blame for the delay in serving Defendant, the court declines to adopt Magistrate Judge Morgan's R&R. Therefore, this matter should proceed according to the court rules.

SO ORDERED.

DATE: March 19, 2007

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

J. Gregory Frye, Esq.

U.S. Attorney Stephen J. Murphy

Magistrate Judge Virginia M. Morgan